

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 01-00088-01-CR-W-DW
)	
MICHAEL EDWARD LEBRUN,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Todd P. Graves, United States Attorney, and Matt J. Whitworth, Deputy United States Attorney, and the defendant, Michael Edward LeBrun ("the defendant"), represented by Glenn E. Bradford.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to the Information charging him with a violation of 18 U.S.C. § 1112(a), that is, voluntary manslaughter. A copy of the Information setting forth the charge is attached as Exhibit A. By entering into this plea agreement, the defendant admits that he knowingly committed this offense,

and is in fact guilty of this offense. In exchange for defendant's plea of guilty to the crime charged in the attached Information, that is, voluntary manslaughter, the United States agrees that at the time of sentencing it will dismiss the pending Indictment, charging felony-murder.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offense to which he is pleading guilty are as follows:

Defendant admits that on or about January 17, 1968, he was serving in the United States Navy and was assigned for duty aboard the USS Cacapon. Defendant admits that in the early morning hours of January 17 he was confronted by his superior officer, Ensign Andrew Lee Muns, while defendant was stealing money from a safe located in the disbursement office of the USS Cacapon. Defendant admits that after Ensign Muns confronted him and informed defendant he was going to report the theft to Naval authorities, defendant, upon sudden quarrel and in the heat of passion, killed Ensign Muns by striking, choking and strangling him until he died. Defendant further admits the manslaughter occurred on a vessel belonging to the United States Navy.

4. Statutory Penalties. The defendant understands that upon his plea of guilty to the Information charging him with voluntary manslaughter, the maximum penalty the Court may impose is not more than ten years of imprisonment. The defendant further understands that this offense is a felony.

5. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal

offenses related to the death of Andrew L. Muns for which it has venue and which arose out of the defendant's conduct described above.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement.

6. Agreements of the Parties. Under the terms of the plea agreement, defendant agrees that the Court may sentence him to a term of imprisonment of not less than probation and not more than ten years. The Government agrees that it will leave sentencing to the sound discretion of the Court and will not make a specific recommendation regarding a sentence at the time of sentencing. Defendant further agrees he is waiving any claim that the statute of limitations has expired on the charge of voluntary manslaughter as described in the attached Information. The parties further agree that the Federal Sentencing Guidelines are not applicable in this case.

7. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the

offense conduct. This may include information concerning the background, character, and conduct of the defendant. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

8. Defendant's Agreement of Full Disclosure. The defendant agrees to provide all information not previously given to NCIS investigators concerning his knowledge of, participation in, or the participation of others in the offense charged in the information. The defendant agrees to meet with NCIS investigators and will make himself available at a reasonable time for an interview if additional information exists concerning the involvement of any other individuals. Defendant may have counsel present at any interview if he desires. The defendant agrees that he will not falsely implicate any person or entity and will not protect any person or entity through omission or false or misleading information and that all information provided will be truthful, complete and accurate;

9. Withdrawal of Plea. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charge in the Information;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

11. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he

has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

12. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, *i.e.*, a sentence that is contrary to law. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

13. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

14. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, other than minor traffic offenses, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

15. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

16. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

17. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their

normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Todd P. Graves
United States Attorney

Dated _____

By _____
Matt J. Whitworth
Deputy United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offense charged in the Information. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated _____

Michael Edward LeBrun
Defendant

I am defendant Michael Edward LeBrun's attorney. I have fully explained to him his rights with respect to the offense charged in the Information. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Michael Edward LeBrun's decision to enter into this plea agreement is an informed and voluntary one.

Dated _____

Glenn E. Bradford
Attorney for Defendant